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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 27th April, 2016

\+ **MAC.APP. 621/2014**

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. A. K. Soni, Adv.

versus

SUSHEELA DEVI & ORS ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Dhukhi Mukhia, 36 years old, died in a motor vehicular accident that occurred on 27.04.2011 involving negligent driving of truck bearing registration no.DL-1GB-2186 (the offending vehicle), admittedly insured against third party risk with appellant/insurance company (the insurer). The dependant family members of the deceased instituted an accident claim case under Sections 166 & 140 of the Motor Vehicles Act, (the MV Act) on 06.06.2011, registered as case no.03/2012 impleading, besides the driver and owner of the offending vehicle, the insurer. The tribunal held inquiry and passed judgment dated 26.05.2014 upholding the case for compensation under Section 166 of the MV Act. It awarded compensation in the total sum

of ₹15,35,455/- with interest at the rate of seven & half percent (7.5%) per annum which includes ₹13,00,455/- towards loss of dependency, ₹1,00,000/- each towards care and guidance, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss of estate.

2. The insurer, by appeal at hand, questions the calculation of loss of dependency wherein the tribunal after assuming the income (₹6422/-) on the basis of monthly minimum wages had added element of 50% towards future prospects. The claimant through counsel, on the other hand, submits that the award under the head of loss of estate and interest rate are unduly low.

3. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon'ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.,* (2015) 9 SCC166.

4. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.)* decided on 12.1.2015, presently taking the decision

in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are "self-employed" or engaged in gainful employment at a "fixed salary" is clarified by a larger bench of the Supreme Court. This applies to the matter at hand because the claimant here pleaded about gainful employment at a fixed salary and has not led any evidence showing the salary was subject to any periodic increase.

5. Since there was no proof of progressive rise in the income, future prospects have to be kept out. Since the number of dependants was six, one fourth is deducted towards personal and living expenses and loss of dependency is worked out on multiplier of 15. The total loss of dependency is, thus, calculated as (6422x3/4x12x15) ₹8,66,970/-, rounded off to ₹8,67,000/-.

6. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, ₹25,000/- is added towards loss of estate. The total compensation in the case comes to (8,67,000+2,50,000) ₹11,17,000/-.

7. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

8. The award is modified accordingly.

9. The directions in the orders dated 01.08.2014 and 19.08.2014, read together, show that the entire awarded amount with up-to-date interest was

deposited with Registrar General from out of which 70% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court Branch, New Delhi.

10. The Registrar General shall calculate the amount payable to the claimants in terms of the award modified as above and release the balance to them refunding the excess in deposit to the insurance company.

11. The statutory deposit, if made, shall be refunded.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 27, 2016
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